

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LUIS PAULINO RODRIGUEZ,

Plaintiff,

- against -

F.B.O.P., et al.,

Defendants.  
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USDC SDNY  
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ELECTRONICALLY FILED  
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DATE FILED: November 2, 2015

13 Civ. 3643 (PAC) (SN)

**ORDER ADOPTING  
REPORT AND  
RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

In May 2013, Luis Paulino Rodriguez, pro se, sued the warden of the Metropolitan Correctional Center and its clinical director under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), alleging unconstitutional medical indifference. In February 2015, the Court denied defendants' Motion for Judgment on the Pleadings and authorized limited discovery on the issue of exhaustion, to be completed by June 30, 2015. (Dkt. 58, 63.) On July 31, 2015, the government informed the Court that Rodriguez had been removed from the United States and had not responded to defendants' discovery requests. (Dkt. 71.) The Court ordered Rodriguez to contact the Court with his intentions regarding the case and his present address, warning that he faced the dismissal of his case for failure to prosecute. (Dkt. 72.) But Rodriguez never responded.

On October 7, 2015, Magistrate Judge Sarah Netburn issued a report and recommendation (R&R) recommending that the Court dismiss Rodriguez's claims without prejudice for failure to prosecute under Fed. R. Civ. P. 41(b). (Dkt. 73.) The R&R noted the process and timeline for objecting to the R&R, but the R&R was not mailed to Rodriguez

because the Court does not have his current address. Not surprisingly, Rodriguez has not filed any objections.

“To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). The Court finds no error in Magistrate Judge Netburn’s R&R and therefore adopts its findings as its own. The Court agrees that Rodriguez’s claims should be dismissed without prejudice so that he can resume them if he lawfully returns to the United States within the statutory limitation period.

Rodriguez’s Complaint is DISMISSED without prejudice. The Clerk is directed to enter judgment and terminate the case. Pursuant to 28 U.S.C. § 1915(a)(3), the Court finds that any appeal from this order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438 (1962).

Dated: New York, New York  
November 2, 2015

SO ORDERED



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PAUL A. CROTTY  
United States District Judge

Copy mailed by chambers to:

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